

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

HARRY SMITH, JR. and ROSLYN)	
WOODARD SMITH, Individually and as)	
Administrators of THE ESTATE OF)	
HARRY SMITH, III)	
)	
Plaintiffs,)	Case No. 04-1254-GMS
)	
v.)	
)	
CITY OF WILMINGTON, JOHN)	
CIRITELLA, THOMAS DEMPSEY, and)	
MATHEW KURTEN,)	
)	
Defendants.)	

**APPENDIX OF EXHIBITS TO
DEFENDANTS' REPLY BRIEF IN SUPPORT OF THEIR
SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT**

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Dated: March 14, 2007

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HARRY SMITH, JR., and ROSLYN)
WODDARD SMITH, Individually and as)
Administrators of the ESTATE OF)
HARRY SMITH, III,)

Plaintiffs)

v.)

CITY OF WILMINGTON, JOHN)
CIRITELLA, THOMAS DEMPSEY and)
MATTHEW KURTEN,)

Defendants)

Civil Action
No. 04-1254-GMS

Deposition of Joseph J. Stine taken
pursuant to notice at the law offices of Richards,
Layton & Finger, Esquires, One Rodney Square, Third
Floor, Wilmington, Delaware, beginning at 10:13 a.m.
on Thursday, October 5, 2006, before Christina M.
Vitale, Certified Shorthand Reporter and Notary
Public.

APPEARANCES:

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For the Defendants

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1 Q. Do you know of any others?
2 **A. None that come to mind at this moment.**
3 Q. So far and I don't want to put words into your
4 mouth, but I need to get a list, you have told me,
5 number one, you don't have more than one car with
6 lights and siren on because it's disorienting for the
7 other police officers; and, number two, you told me
8 that it's difficult to talk on the radio if there is a
9 siren going on, is that right?
10 **A. Right.**
11 Q. Is there any other reason?
12 **A. Yes, safety, safety for the officers involved.**
13 **If something is going on in front of the pursuit, you**
14 **have got half a dozen other cars kind of following**
15 **along with their lights and sirens on, there is a good**
16 **chance that they're not going to be aware of what is**
17 **happening up in front and they're going to wind up --**
18 **you are going to have one of those movie-type pile-ups**
19 **where you have six or seven police officers piled up**
20 **and they're seriously injured.**
21 **So, it's a safety factor for the police,**
22 **it's a safety factor for the citizenry. One car with**
23 **lights and siren on driving through city streets in**
24 **pursuit is enough of a risk, you don't need more than**

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1 the officers involved. In this particular instance
2 did you see any injuries or problems for the officers
3 involved because of multiple use of sirens and lights?
4 **A. Nothing -- if you are asking me as an end**
5 **result did something happen, no, nothing did.**
6 Q. And your final factor was safety factors for
7 the citizenry. I understand how you contend that the
8 citizens or at least one citizen was injured by the
9 shooting, but my question is a little bit narrower
10 here and, that is, did you see any evidence that the
11 citizens of the city were injured by reason of the
12 multiple lights and sirens?
13 **A. Not that they were actually injured, but**
14 **certainly that they were placed at risk of injury.**
15 Q. Now, on -- go down to the fourth item that you
16 gave me, that is, the continuing pursuit of Mr. Smith.
17 Mr. Stine, you have told me this already and I'm not
18 trying to badger, I have just forgotten what you have
19 said and I apologize to you.
20 **A. Okay.**
21 Q. When do you believe that the pursuit should
22 have been abandoned?
23 **A. Within a couple of blocks of the initiation of**
24 **it.**

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1 **that.**
2 Q. What evidence have you seen that police
3 officers were disoriented because there was more than
4 one siren and lights on?
5 **A. These are universally accepted precautions to**
6 **make sure these things don't happen. Just because**
7 **somebody is lucky enough and something doesn't happen**
8 **doesn't mean you shouldn't take the precautions.**
9 Q. My question was --
10 **A. I don't see any evidence of anybody who was**
11 **disoriented specifically.**
12 Q. And you told me about it was difficult for
13 radio talk over the siren because there was sirens on,
14 am I right?
15 **A. Yes.**
16 Q. If one car had its siren on, wouldn't that be a
17 problem?
18 **A. It would be -- it would be -- it would be a**
19 **problem. It's amplified the more cars you have**
20 **involved and especially the communications car, the**
21 **car that is relaying the route and talking to the**
22 **radio room, it becomes more difficult for them to get**
23 **information.**
24 Q. You said that another reason is the safety of

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1 Q. Now, would that have been before or after Mr.
2 Smith turned off of Washington Street onto Seventh
3 Street?
4 **A. It would have been -- it should have been**
5 **terminated after he showed that he was not inclined to**
6 **stop and that he was making -- committing motor**
7 **vehicle violations that were placing people at risk.**
8 **Once that became evident, and that became evident**
9 **relatively quickly, then the police -- then the**
10 **pursuit became more dangerous than terminating it.**
11 Q. Is it fair to say that once Mr. Smith drove --
12 at the time Mr. Smith was driving the wrong way on
13 Seventh Street he was putting citizens at risk?
14 **A. Yes.**
15 Q. And he may or may not have done so even before
16 that event, am I correct?
17 **A. Yes.**
18 Q. We talked about the barricade a little bit and
19 I understand you to say that it was a violation of
20 standard police practices to use a barricade, am I
21 correct?
22 **A. Yes.**
23 Q. Is it always a violation of standard police
24 practices to use a barricade?

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1 **A. I'm trying to think of a time when it's**
2 **justified or when it's okay and I'm hard-pressed to**
3 **come up with any. It is so universally condemned and**
4 **so universally rejected as a viable tactic that it's**
5 **just not something that police officers do anymore.**
6 **It's not something that professional police officers**
7 **do when they're trying to stop a car that is fleeing.**
8 Q. And I gather that's because it poses a risk to
9 the officers?
10 **A. All the factors we talked about before, risk to**
11 **the officers, the person they're chasing, the**
12 **citizenry in general, overwhelming damage to property.**
13 Q. And we have talked about Detective Ciritella
14 stepping out in front of the car as one of the other
15 numerous generally accepted practices, am I correct?
16 **A. Yes.**
17 Q. And I think we have already discussed that.
18 Why don't we move on to the next item on Page Four,
19 which is E, "Failure of on-duty supervisors, many of
20 whom were actively participating in the pursuit, to
21 exercise their supervisory authority to direct,
22 control and terminate the pursuit." Who were the
23 supervising officers here?
24 **A. I don't know specifically by name, but I know**

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1 **that there were sergeants involved, I know there was a**
2 **lieutenant involved. I don't know if there were any**
3 **higher ranking people involved and that doesn't really**
4 **matter. Any police supervisor who is on the air has**
5 **the authority to terminate a pursuit because it's just**
6 **so widely acknowledged in the police profession how**
7 **dangerous these things are and that they really need**
8 **to be stopped, you don't let them go on, and that's**
9 **why you give the sergeants the authority to do it.**
10 Q. Does this relate to the defendants in this
11 case, E?
12 **A. Well, Sergeant Dempsey was on the air so he**
13 **could have terminated it. Actually, any police**
14 **officer could get on the air and say, You know what,**
15 **this is too dangerous, we have to stop. So, Detective**
16 **Ciritella could have done it. Officer Kurten could**
17 **have done it.**
18 Q. Is it your testimony then that Officer Kurten
19 could have instructed the other officers, including
20 sergeants, to call off the pursuit?
21 **A. That is what we strive for in police work, that**
22 **if somebody, anybody, has a clearer perception of what**
23 **is going on, whether that person be a cop and he is**
24 **telling the police chief that this is dangerous and we**

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1 **should stop, that that should be done.**
2 MR. PARKINS: Why don't we take a break.
3 It's five minutes left on the tape. Ann, do you want
4 to call us back in ten minutes?
5 MS. SULTON: I will, thank you.
6 THE VIDEOGRAPHER: We are going off the
7 record at approximately 2:28 p.m.
8 (Brief recess.)
9 THE VIDEOGRAPHER: We are back on the
10 record at approximately 2:43 p.m.
11 Q. If we continue on Page Four of your report in
12 Part G it says, "Failure to consider the ramifications
13 of forcing an encounter in a highly congested
14 residential neighborhood." Do you know whether the
15 defendants considered the ramifications and decided
16 that the benefits exceeded the risks?
17 **A. What I do know -- I don't know for sure what**
18 **they considered. What I do know is what I can -- the**
19 **de facto evidence is where they chose to do this and I**
20 **do know that police officers are trained to try to**
21 **pick the best spot to make a regular vehicle stop, any**
22 **kind of a vehicle stop. When you have a vehicle stop**
23 **like this where you are going to use these kind of**
24 **tactics of barricades, you really should try to pick a**

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1 **spot that is more conducive.**
2 Q. "Failure to consider the ramifications of
3 shooting at a moving vehicle", which is Part H, do you
4 see that?
5 **A. Yes, sir.**
6 Q. Is it your view that it is always a departure
7 from the standard of care of police officers to shoot
8 at a moving vehicle?
9 **A. Only in extremely rare situations could a**
10 **shooting -- is a shooting at a moving vehicle**
11 **justified.**
12 Q. So, these police officers when they were there
13 would have understood that in extremely rare occasions
14 it's okay to shoot at a moving vehicle?
15 **A. Yes. If there was a child laying in the street**
16 **in the direct path of the car that was coming at it**
17 **and there was no way that that child could move and**
18 **the officer's only possible option was to shoot at the**
19 **moving vehicle, it would be a terrible option because**
20 **it probably wouldn't work, but at least he would be**
21 **able to try something.**
22 Q. I would like to talk just a little bit more
23 about the paralleling of the chase and I believe you
24 told us that's one of the items that you fault the

29 (Pages 110 to 113)

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1 Q. And would you assume that the tire tracks
2 probably came from that?
3 **A. Yes, that's -- my speculation would be since he**
4 **was engaged with that car pushing it that the vehicle**
5 **is not equipped to do that and was having trouble with**
6 **traction.**
7 Q. Okay. And I assume that you would -- strike
8 that. Would you assume that he was flooring the car
9 and that's why the car was spinning?
10 **A. I couldn't make that assumption. I don't know**
11 **what he was doing, but.**
12 Q. Is there any mention made of either the tires
13 screaming and the rubber smelling and all of that in
14 your report?
15 **A. No.**
16 Q. Is there any reason why you omitted that from
17 your report?
18 **A. I didn't think -- it was just further evidence**
19 **that he was trying to -- that he was pulling away from**
20 **the scene and I didn't think it was that -- I didn't**
21 **think it was that important. I didn't think it was**
22 **reason to shoot him.**
23 Q. But was it important in your view to explain
24 why it wasn't important? Does that make sense?

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1 **A. I didn't think it added anything to the**
2 **officer's justification or attempted justification for**
3 **shooting him.**
4 Q. There has been a theory floated about in this
5 case that Mr. Smith was simply trying to evade the
6 gunfire when he ran up over the curb and hit the
7 parked Jeep Cherokee and turned up Harrison Street.
8 Are you familiar with the fact that there is such a
9 theory?
10 **A. Yes.**
11 Q. Are you in a position to testify as to whether
12 that theory is valid or not valid or you have no
13 position?
14 **A. Well, I mean, I know that people generally**
15 **don't like to be shot at and people generally take**
16 **actions to avoid being shot at. When I've been shot**
17 **at I duck, I get out of the way and most police**
18 **officers do, most people do. When you know somebody**
19 **is shooting at you, you take evasive action. So, it**
20 **wouldn't be beyond the pale to assume that one of the**
21 **motivations of Mr. Smith at that time was to try to**
22 **get away from the gunfire.**
23 Q. Is that the case or is it equally possible that
24 he was simply trying to evade police gunfire or not?

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1 **A. I put a comma in that sentence where you didn't**
2 **mean one. Was trying to evade police gunfire or not?**
3 **He appeared to have been trying to evade the police by**
4 **his actions up until the barricade. He continued to**
5 **be appearing to try to avoid them. Whether he was**
6 **more motivated to avoid them because he was being shot**
7 **at? I know I would be. So, I don't know. I can't**
8 **answer that question specifically, but I think it's**
9 **very possible that being shot at would have made him**
10 **even more motivated to try to get away from the**
11 **police.**
12 Q. If you assume that he turned the car in the
13 direction of Defendant Ciritella before gunshots were
14 fired, would you conclude that at least at that point
15 in time he was simply trying to evade the police and
16 not avoid gunfire?
17 **A. See, he had already been shot by a policeman**
18 **and so I don't know. It is possible in his mind he**
19 **was afraid he was going to get shot again. So, I**
20 **mean, that could have been the motivation for him**
21 **trying to avoid the police. He could have been trying**
22 **to get to someplace safe where the police weren't**
23 **going to shoot him, somewhere where he could**
24 **surrender. That's a possibility.**

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1 **I'm not saying exactly this is what**
2 **happened, but I am saying it is a possibility, it is**
3 **likely that he was trying to avoid the police by going**
4 **up on that curb to get around that barricade. Why? I**
5 **don't know.**
6 Q. I'm afraid that we are coming to the point in
7 time where we are going to have some do some artwork.
8 **A. Artwork, okay.**
9 Q. Let me get you some plain pieces of paper. We
10 are going to get some unlined pieces of paper and
11 what I'm going to do is to ask you, if you could, in
12 the first instance draw a diagram of Fifth and
13 Harrison Street and indicate on the diagram where you
14 understand the cars, the two barricade cars, were and
15 where you understand the police officers were at the
16 time that Mr. Smith was driving down Fifth Street and
17 approaching the barricade.
18 MR. PARKINS: John, for the record would
19 you mark that as a deposition exhibit, please?
20 MR. PARKINS: Oh, certainly, Anne.
21 Q. I'll explain this to you once the paper comes
22 so that you don't have to remember this.
23 MR. PARKINS: Can we go off the record for
24 a minute?

33 (Pages 126 to 129)

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1 Q. Have you seen any contrary evidence to dispute
2 in this case the identification by the ATF as to which
3 shell casings came from which weapon?
4 **A. Not yet, no.**
5 Q. When you reviewed Delaware law, did you look at
6 statutes, Delaware statutes?
7 **A. Yes.**
8 Q. Were these given to you by Ms. Sulton or were
9 these statutes that you independently obtained?
10 **A. I independently obtained.**
11 Q. Did you consider what possible crime Mr. Smith
12 was guilty of if the jury concluded that he tried to
13 run over Detective Cirtella on Fifth Street?
14 **A. If the jury came to the conclusion that what he**
15 **was trying to do was drive over the detective, there**
16 **could be an aggravated assault. I actually don't**
17 **recall the specific phrasiology used for these crimes**
18 **in Delaware law.**
19 **I understand the concept of them,**
20 **aggravated assault being a more serious assault,**
21 **felonious assault or it could also have been judged to**
22 **be a simple assault.**
23 Q. My question was a little bit different. Did
24 you attempt to determine what crime Mr. Smith would

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1 have been guilty of if the jury concludes he was
2 attempting to run down Detective Cirtella?
3 **A. Either an aggravated assault or a simple**
4 **assault.**
5 Q. You did attempt to do so, is that correct?
6 **A. Yes.**
7 Q. You did attempt to determine that? What is the
8 crime if an individual recklessly kills a police
9 officer while the officer is in the performance of his
10 duties?
11 **A. What is the crime?**
12 Q. Yes.
13 **A. It's a homicide.**
14 Q. In what degree? Do you know?
15 **A. I don't know the degree.**
16 Q. Assume for the moment that that were -- that it
17 is murder in the first degree to recklessly kill a
18 police officer during the performance of his duties,
19 what would an attempt to do so be?
20 **A. I'm not certain under Delaware law. In many**
21 **places it would be the same, it would be a felony.**
22 Q. And would it be attempted murder?
23 **A. Yes.**
24 Q. Can we agree that at this point in time

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1 Detective Cirtella was a police officer?
2 **A. Yes.**
3 Q. And can we agree he was in the performance of
4 his duties?
5 **A. Yes.**
6 Q. Have you studied the constitutional parameters
7 of deadly force to prevent an escape?
8 **A. Yes.**
9 Q. Tell me your understanding of them.
10 **A. A police officer is justified in the use of**
11 **deadly force to prevent the escape of a fleeing felon**
12 **who has committed a forcible felony who is either**
13 **armed or possesses a weapon that could be used against**
14 **another person for commission of an additional felony**
15 **or that the officer feels that he -- there is no way**
16 **of him catching him, no reasonable way of him catching**
17 **him. I believe that's the -- they're the requirements**
18 **or they're the standards.**
19 Q. Do you believe that a police officer is
20 justified under the constitution in using deadly force
21 to apprehend a fleeing felon if the officer believes
22 that there is a risk of harm to himself or other
23 citizens if the felon escapes?
24 **A. A reasonable belief, yes.**

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1 Q. If the jury concludes that in all likelihood
2 Mr. Smith was trying to run down Detective Cirtella,
3 would you agree with me that under those circumstances
4 it would be fair to consider him a felon?
5 **A. Not necessarily.**
6 Q. Is there something -- we are talking about a
7 police officer on the scene, is it reasonable if
8 somebody tried to run him down that they would
9 consider him a felon?
10 **A. It would depend on whether they thought -- some**
11 **juries sometimes would characterize that as a simple**
12 **assault and not an aggravated assault. In that case**
13 **it wouldn't be a felon.**
14 Q. I asked you to assume that the jury tried to
15 run him down and kill him -- I didn't say that --
16 tried to run over and kill him. Would you agree with
17 me under those circumstances that it was reasonable
18 for the police officers to then believe he was a
19 felon?
20 **A. Yes.**
21 Q. And we have already discussed the fact that
22 it's reasonable for the police officers to have
23 believed at that time that he was attempting to evade
24 police when he drove around the barricade?

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1 **A. Yes.**
2 Q. And so, therefore, it would be reasonable for
3 the police officers to conclude that he was attempting
4 to escape?
5 **A. Yes. Yes.**
6 Q. So, then the issue becomes whether the police
7 officers believed that there was a threat of --
8 reasonably believed there was a threat to the safety
9 of the citizens of Wilmington if he were allowed to
10 escape, is that correct?
11 **A. Well, a greater threat than the threat that**
12 **they would impose by firing those shots in that**
13 **circumstance.**
14 Q. Let's now review what was known to the police
15 officers at this time. Number one, they knew, did
16 they not, that Mr. Smith had been involved in some
17 event on Washington Street where the police officers
18 called -- on Washington Street called for back-up?
19 **A. Yes.**
20 Q. Is it correct to say the police officers
21 generally call for back-up when there is a potentially
22 dangerous situation?
23 **A. No.**
24 Q. Did -- what other circumstances would they call

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1 **from the tone of voice we -- police officers get to**
2 **know that there is a routine kind of asking for help**
3 **and then there is something that is a little**
4 **extraordinary.**
5 Q. So, you wouldn't disbelieve Detective Ciritella
6 if he were to testify, I heard the radio call from 16
7 Charles and I knew immediately something was wrong?
8 **A. No, I wouldn't contest that at all.**
9 Q. Then, the police officers including Detective
10 Ciritella knew that shots had been fired, is that
11 correct?
12 **A. Well, that was what the broadcast said, yes.**
13 **Actually it turns out it was incorrect.**
14 Q. But at the time on the street Detective
15 Ciritella had heard, "Shots fired"?
16 **A. Yes.**
17 Q. And we -- is it fair to say that Detective
18 Ciritella knew that the suspect had the police car?
19 **A. It's fair to say that he knew someone had the**
20 **police car, someone had the police car without the**
21 **permission of the officers or the police department.**
22 Q. We'll refer to him as a suspect just to make
23 life easy.
24 **A. Yes, but I don't want to -- I want to make it**

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1 for back-up?
2 **A. Traffic control, they need some advice on how**
3 **to fill out a specific report, crowd control, and**
4 **included in that list would be if they felt there was**
5 **some sort of danger to them.**
6 Q. You told me at the beginning of your deposition
7 today that one of the advantages of listening to an
8 audiotape is to hear the inflection of the person
9 saying something, is that right?
10 **A. Yes.**
11 Q. Suppose for the moment that Detective Ciritella
12 were to testify that he heard over the radio the
13 officer on Washington Street call for back-up and he
14 could tell from the officer's tone of voice that this
15 was not an ordinary thing like a traffic control or
16 something of that nature, but that there was trouble.
17 Would that be something that police officers can
18 instinctively and reasonably do?
19 **A. Yes. You wouldn't know what kind of trouble,**
20 **you wouldn't know if it was trouble that it was**
21 **overwhelmed by traffic there, if there is a serious**
22 **motor vehicle accident, if somebody had fallen and**
23 **hurt himself, if his partner had just taken a heart**
24 **attack. I mean, you wouldn't know -- you would --**

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1 **clear it wouldn't have been fair to say that he knew**
2 **that the fact that a person now had control of that**
3 **police car had any direct relationship to the shots**
4 **fired or direct relationship to the call for**
5 **assistance.**
6 Q. Would it be reasonable for Detective Ciritella
7 to have believed that having heard in the same
8 sentence essentially, Shots fired, shots fired, he is
9 in the car, that the firing of the shots had something
10 to do with the person in the car?
11 **A. It would be a leap. It could be something that**
12 **you can infer from that, but it's certainly not a**
13 **given.**
14 Q. Then, would it be fair for Detective Ciritella
15 to have believed that whoever was in the stolen police
16 car had led the police on a chase?
17 **A. Yes.**
18 Q. And would it be fair for Detective Ciritella to
19 have believed that during this chase the stolen police
20 car went the wrong way on Seventh Street?
21 **A. Yes, but I just want to actually as far as the**
22 **question before you said led the police on a chase.**
23 **That's the whole problem with this. We don't want to**
24 **allow criminals or someone who has taken a police car**

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1 for the officers on Fifth Street to believe that the
2 situation was coming to a close?
3 **A. It was unreasonable, foolhardy and extremely**
4 **poor police tactics.**
5 Q. Are you saying it was unreasonable for them to
6 believe that the situation was coming to a close? Put
7 aside whether it was good police tactics or foolhardy
8 --
9 **A. Yes, it was unreasonable.**
10 Q. The next item you told me about that you
11 faulted was Smith was driving at Ciritella, which
12 caused him to use deadly force or words to that
13 effect?
14 **A. It was the probable cause reason to use deadly**
15 **force.**
16 Q. Okay, probable cause to use deadly force. If
17 this jury were to conclude that Mr. Smith accelerated
18 the car and drove directly at Ciritella, would you
19 believe -- would you agree under those circumstances
20 that Ciritella had probable cause to believe his life
21 was in danger? Would you like me to rephrase that?
22 **A. Yes, please.**
23 Q. Let's divorce this from the report for a
24 second. If this jury is to conclude that Detective --

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1 **A. There were only a few seconds, which you talked**
2 **about, it only took a few seconds, and the fact that**
3 **he accomplished it means it was one of the options.**
4 Q. How far did the car go -- pass by?
5 **A. A foot or two, I believe.**
6 Q. You are prepared to tell this jury -- this is
7 divorced from the report -- you are prepared to tell
8 this jury that as the car accelerated and turned in
9 the direction of Detective Ciritella it was
10 unreasonable for him to believe his life was in
11 danger?
12 **A. Well, obviously by jumping out of the way you**
13 **are taking a step to preclude yourself from a danger,**
14 **what you think is going to hurt you, but what we are**
15 **talking about here is the shooting, the probable cause**
16 **for shooting this person, probable cause for firing**
17 **shots at this person. So, yes, it was reasonable to**
18 **assume that if he got hit by this car, it was going to**
19 **hurt him and, yes, it was reasonable for him to take**
20 **some action to make sure that that didn't happen; and,**
21 **he did, he jumped out of the way.**
22 Q. Now, once the officer was placed in danger if
23 he reasonably assumed that his life was in danger, do
24 you have probable cause to use deadly force in an

Page 179

1 that Mr. Smith accelerated the car, turned it in the
2 direction of Detective Ciritella, was it reasonable
3 under those circumstances for Detective Ciritella to
4 believe his life was in danger?
5 **A. Possible, not definitively because he was able**
6 **to rather easily sidestep the car. He had ready cover**
7 **available in the corner of the building, which he**
8 **abandoned. So, whether that was a reasonable belief**
9 **that's part of the crux of this whole thing and it's**
10 **one of the things that I would have expected an**
11 **investigation that was not focused -- I know we are**
12 **not supposed to be talking about this now, but --**
13 Q. Talk about whatever you want.
14 **A. Since we started on that it's one of the things**
15 **I would have expected an investigation that was not**
16 **trying to justify these officers' actions to look**
17 **into, to examine.**
18 Q. What is the basis for your testimony that
19 Detective Ciritella rather easily sidestepped the car?
20 **A. Because he wasn't hit by it, he took two steps**
21 **to the side, the car passed him. So, he was able to**
22 **do it.**
23 Q. What do you mean by "easily", though? Does the
24 fact that he accomplished it means it was easy?

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1 attempt to save his life? Let me rephrase that for
2 you. Let's assume that the jury concludes that
3 Detective Ciritella reasonably believed that his life
4 was in danger when the car started to drive at him.
5 Under those circumstances do you believe he had
6 probable cause to use deadly force and I understand
7 your contention that he didn't reasonably believe his
8 life was in danger?
9 **A. No, that's not my contention because he took a**
10 **step to get out of it. What I'm saying is that the**
11 **use of deadly force was not a reasonable -- the use of**
12 **that deadly force in that circumstance was not a**
13 **reasonable response on the part of the officer because**
14 **it was not going to have the desired effect. It was**
15 **not going to stop that car. What he needed to do was**
16 **what he did, was jump out of the way. He needed to**
17 **remove himself out of danger.**
18 **What I say is that, yes, there was a**
19 **reasonable belief on his part that he was in danger**
20 **and he took a reasonable step to avoid that danger by**
21 **jumping out of the way. I don't think the reaction of**
22 **shooting the car was reasonable.**
23 Q. You indicated that there was no reasonable
24 belief that Mr. Smith was armed. Tell me what is your

46 (Pages 178 to 181)

Smith, et al.
Joseph J. Stine

v.
C.A. # 04-1254-GMS

City of Wilmington, et al.
October 5, 2006

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1 understanding as to what the officers knew or at least
2 believed about the possibility of a shotgun in the
3 car.
4 **A. That the officers -- well, from pretty much**
5 **from the time the car had left -- the car was almost**
6 **-- my understanding is that the car was almost always**
7 **under observation of the police after it fled the**
8 **scene. So, there wasn't any chance for Mr. Smith to**
9 **stop the car, go in the trunk and get the shotgun out**
10 **of the trunk.**
11 **My reading of Wilmington Police Department**
12 **directives says that the shotgun is to be stored in**
13 **the trunk and later on after this was eventually**
14 **discovered police officers in their depositions said**
15 **that that's where the shotgun was and that's where it**
16 **usually was and that's where they expected it to be**
17 **and, in fact, that's where it was.**
18 **So, there is no reason in my mind, my**
19 **opinion, there is no reason to believe that any**
20 **reasonable officer could have thought that Mr. Smith**
21 **had access to that shotgun, actual physical access to**
22 **the shotgun. There was no broadcast about the knife,**
23 **that he had been armed with a knife, and there was no**
24 **indication there were any other weapons available.**

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1 Q. You say later on once this had been discovered,
2 what are you referring to?
3 **A. Well, early on, and in the reports by the**
4 **inspector general, by the city solicitor, by the city**
5 **-- by the police department internal affairs everybody**
6 **refers to the fact that one of the reasons they had to**
7 **use deadly force was because there was a shotgun in**
8 **the car, there was a shotgun in the car. Nobody**
9 **mentioned that that shotgun was, in fact, in the**
10 **truck. Everybody knew that that was in the room.**
11 **Everybody in the police department knew it, but nobody**
12 **mentioned it.**
13 Q. Did Ciritella know that when he was on the
14 corner of Fifth and Harrison Street?
15 **A. He should. It was part -- it was the**
16 **departmental procedure, departmental policy. He was a**
17 **member of that police department.**
18 Q. Well, let me ask you this. That policy was
19 written, just trust me on this, in 1995, all right?
20 **A. Okay.**
21 Q. At the time in 1995 police cars did not have
22 gun racks that were purchased by the City of
23 Wilmington, did not have gun racks in the front
24 compartment. Under those circumstances would you

Page 184

1 believe it would be reasonable to place the shotgun in
2 the trunk?
3 **A. Yeah, sure, sure.**
4 Q. You have been in patrol cars that have gun
5 racks in the front, haven't you?
6 **A. Yes.**
7 Q. And they're placed there to hold what?
8 **A. The shotgun.**
9 Q. And you have been in patrol cars that have had
10 shotguns in the front, haven't you?
11 **A. Yes.**
12 Q. It's not unusual?
13 **A. Not in Wilmington, yes.**
14 Q. Have you ever been in a Wilmington police car?
15 **A. Yeah, actually I have, a long time ago.**
16 Q. A long time ago before 1995?
17 **A. Yes.**
18 Q. And at the time there was no gun rack in the
19 car, was there?
20 **A. I don't think so.**
21 Q. Now, sometime after 1995 City of Wilmington
22 starts purchasing Crown Victoria police interceptors
23 which have gun racks in the front, all right? Will
24 you just assume that to be the case? And the police

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1 officers, did they not, testify that it was common
2 practice to carry the shotgun in the gun rack in the
3 front and it was simply a case where people neglected
4 or forgot or failed to modify the procedure that was
5 in place in the days when they purchased police cars
6 without gun racks?
7 **A. I don't know who testified to that. I never**
8 **saw that testimony.**
9 Q. Did you see testimony that it was common
10 practice to place a shotgun in the front in the gun
11 rack?
12 **A. My recollection of what I read was that it was**
13 **common practice to put them in the trunk.**
14 Q. I will show this to you, but I want to read it
15 into the record first so that we have something and
16 then I'll let you take a look at it here, okay?
17 Rather than belabor this I'll ask you to look at this
18 late, but assuming for the moment that the jury
19 believes that Mr. Smith -- excuse me -- that the
20 officers reasonably believed there was a shotgun in
21 the front, and I know you don't believe that to be the
22 case, but would it be fair for them to conclude that
23 the officer was reasonable in believing that Mr. Smith
24 was armed or could be armed?

47 (Pages 182 to 185)

Page: 1	Report Date: 09/14/2003	Agency: Wilmington PD	Complaint: 30-03-094484
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Supplemental Report - #7

Occurrence Dates and Times: 09/13/2003 1849	Grid 222-222	Sector 16
Initial Location: 1300 Block of North Washington ST Wilmington, DE 19801		

Original Victim Information

Victim Number 001	Name STEVENSON, WILLIAM					
Type Individual	Sex Male	Race White	Ethnic Origin Non-Hispanic	Age 55	D.O.B 07/13/1948	
Address 1313 Idlewood RD Wilmington, DE 19805		Resident Status Non Resident	Home Telephone (302) 636-0907	Employer/School		Work Telephone
Reporting Person? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Victim Injured? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Victim Deceased? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Officer Comments			

Original Suspect/Defendant Information

Sequence 001	Type Suspect	SBI Number	Name SMITH, HARRY J		Nick Name			
Sex Male	Race Black	Ethnic Origin Non-Hispanic	Age 25	D.O.B 01/04/1978	Height 5' 08"	Weight 255	Skin Tone	Eye Color
Hair Color	Hair Length	Hair Style	Facial Hair	Voice Speech	Teeth	Build	Glasses	
Address 18 PAYNTER ST Bear, DE 19701			Home Telephone (302) 654-3602	Employer/School		Work Telephone		
Arrest Number	Suspect's Clothing Description							

Original Crime and Associated Information

Victim Number 001	Crime Seq 001	Statute DE:11:0836:00a4:F:B	Crime Description Carjacking First Degree Takes Possession Motor Vehicle Displays What Appears to be a Deadly Weapon or Represents by word or conduct that he or she is in Possession or Control of a Deadly Weapon		
Type Way/Roadway/Alley	Status Pending-Active	Involvement <input type="checkbox"/> Alcohol <input type="checkbox"/> Drugs <input type="checkbox"/> Computer		General Offense	
Suspected Hate/Bias <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No - N/A	Crime Code 12233A - Robbery/Other Weapon Street/Alley/Highway				
Burglary Force Involved <input type="checkbox"/> Yes <input type="checkbox"/> No	Weapon/Force Used Knife/Cutting Instrument				

Investigative Narrative

This writer responded to the 500 block of N. Harrison Street in reference to a police vehicle pursuit involving shots fired. Upon arrival, this writer exited my police vehicle north of the crime scene, where I observed a black and white marked police vehicle with a black male driver. stopped in the middle of the block. The vehicle had what appeared to be several bullet holes about the vehicle. This writer observed several officers approach the vehicle and physically remove the black male driver from the vehicle placing him on the ground and handcuff him. The black male did not utter any words. This writer also observed a white jeep facing north bound south of the black and white police vehicle, stopped in the east lane of the 500 block of N. Harrison. This vehicle had fresh front end damage and several bullet holes in its rear window. This writer also observed a black female sitting on the east sidewalk approximately 30 feet north of 5th Street, being attended to by several police officers. It appeared that this female had sustained a leg wound. This writer observed CID officers on the scene actively investigating the incident. This writer observed several other police vehicles and officers arriving on the scene and positioned them in such a way as to secure the crime scene. Additional officers were also positioned to provide crowd control. While at the scene this writer was approached by Officer Matthew Kurten who advised that he had discharged his departmental weapon. This writer took control of Officer Kurten's weapon and ammo. Upon notifying Capt. Maggitti of Officer Kurten's discharge, he advised that it was no longer necessary to secure his weapon and that it could be returned to him. This writer immediately returned officer Kurten's weapon and ammo to him. This writer did not check officer Kurten's weapon to determine the number of rounds remaining in his weapon. This writer remained on the scene for approximately two hours before turning the scene over to Sgt. Ciotti.

SC9

W0017

Reporting Officer SGT FIORAVANTI - 5895	Pending Supervisory Review		
Solvability Factors	<input type="checkbox"/> Witness <input type="checkbox"/> Suspect Located	<input type="checkbox"/> M.O. <input type="checkbox"/> Stolen Property	<input type="checkbox"/> Trace Stolen Property <input type="checkbox"/> Suspect Named Status

Supplemental Report - #16

Occurrence Dates and Times: 09/13/2003 1849	Grid 222-222	Sector 16
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Location: 1300 Block of North Washington ST Wilmington, DE 19801

Original Victim Information

Victim Number 001	Name STEVENSON, WILLIAM					
Type Individual	Sex Male	Race White	Ethnic Origin Non-Hispanic	Age 55	D.O.B 07/13/1948	
Address 1313 Idlewood RD Wilmington, DE 19805			Resident Status Non Resident	Home Telephone (302) 636-0907	Employer/School	Work Telephone
Reporting Person? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Victim Injured? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Victim Deceased? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Officer Comments			

Original Suspect/Defendant Information

Sequence 001	Type Suspect	SBI Number	Name SMITH, HARRY J			Nick Name		
Sex Male	Race Black	Ethnic Origin Non-Hispanic	Age 25	D.O.B. 01/04/1978	Height 5' 08"	Weight 255	Skin Tone	Eye Color
Hair Color	Hair Length	Hair Style	Facial Hair	Voice Speech	Teeth	Build	Glasses	
Address 18 PAYNTER ST Bear, DE 19701			Home Telephone (302) 654-3602	Employer/School			Work Telephone	
Arrest Number	Suspect's Clothing Description							

Original Crime and Associated Information

Victim Number 001	Crime Seq 001	Statute DE:11:0836:00a4:F:B	Crime Description Carjacking First Degree Takes Possession Motor Vehicle Displays What Appears to be a Deadly Weapon or Represents by word or conduct that he or she is in Possession or Control of a Deadly Weapon					
Offense Type way/Roadway/Alley		Status Pending-Active	Involvement <input type="checkbox"/> Alcohol <input type="checkbox"/> Drugs <input type="checkbox"/> Computer			General Offense		
Suspected Hate/Bias <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No - N/A		Crime Code 1223A - Robbery/Other Weapon Street/Alley/Highway						
Burglary Force Involved <input type="checkbox"/> Yes <input type="checkbox"/> No		Weapon/Force Used Knife/Cutting Instrument						

Investigative Narrative

ON 13 SEP 03 THIS OFFICER (H. BROWN) RESPONDED TO THE CALL OF OFFICERS NEEDING ASSISTANCE AND SHOTS FIRED ON WASHINGTON STREET. AS THIS OFFICER WAS RESPONDING A VEHICLE CHASE BEGAN WHICH WAS TRAVELING TOWARD THIS OFFICER'S LOCATION. THIS OFFICER RESPONDED TO THE 500 BLOCK OF NORTH HARRISON FROM 6TH STREET AT WHICH TIME A PATROL VEHICLE WAS SLOWLY ROLLING TO A STOP AND A SUSPECT WAS TAKEN OUT OF THE VEHICLE AND PLACED ON THE GROUND INTO POLICE CUSTODY. AT THIS TIME THIS OFFICER OBSERVED A VERY LARGE GROUP OF DISORDERLY SUBJECTS AND ONLOOKERS AT THE INTERSECTION OF 6TH AND HARRISON. THIS OFFICER ALONG WITH PTLM. M. RENTZ IMMEDIATELY PLACED CRIME SCENE TAPE ACROSS HARRISON STREET AT 6TH STREET AND STOPPED ALL TRAFFIC AND PEDESTRIAN TRAFFIC FROM COMING INTO THE 500 BLOCK OF N. HARRISON FROM 6TH STREET. THIS OFFICER HELD THIS LOCATION FROM APPROXIMATELY 1900 HOURS TO 0200 HOURS ON 14 SEP 03, UNTIL BEING RELIEVED BY OFFICER GARCIA AT 0200 HOURS.

SC10

W0030

Page: 1	Report Date: 09/16/2003	Agency: V	Wilmington PD	Complaint: 30-03-094484
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Supplemental Report - #17

Occurrence Dates and Times: 09/13/2003 1849	Grid 222-222	Sector 16
Location: 1300 Block of North Washington ST Wilmington, DE 19801		

Original Victim Information

Victim Number 001	Name STEVENSON, WILLIAM				
Type Individual	Sex Male	Race White	Ethnic Origin Non-Hispanic	Age 55	DOB 07/13/1948
Address 1313 Idlewood RD Wilmington, DE 19805		Resident Status Non Resident	Home Telephone (302) 636-0907	Employer/School	Work Telephone
Reporting Person? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Victim Injured? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Victim Deceased? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Officer Comments		

Original Suspect/Defendant Information

Sequence 001	Type Suspect	SBI Number	Name SMITH, HARRY J		Nick Name
Sex Male	Race Black	Ethnic Origin Non-Hispanic	Age 25	D.O.B. 01/04/1978	Height 5' 08"
Weight 255		Skin Tone		Eye Color	
Hair Color	Hair Length	Hair Style	Facial Hair	Voice Speech	Teeth
Build		Glasses			
Address 18 PAYNTER ST Bear, DE 19701			Home Telephone (302) 654-3602	Employer/School	Work Telephone
Arrest Number	Suspect's Clothing Description				

Original Crime and Associated Information

Victim Number 001	Crime Seq 001	Statute DE:11:0836:00a4:F:B	Crime Description Carjacking First Degree Takes Possession Motor Vehicle Displays What Appears to be a Deadly Weapon or Represents by word or conduct that he or she is in Possession or Control of a Deadly Weapon
Type Way/Roadway/Alley	Status Pending-Active	Involvement <input type="checkbox"/> Alcohol <input type="checkbox"/> Drugs <input type="checkbox"/> Computer	General Offense
Suspected Hate/Bias <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No - N/A	Crime Code 12233A - Robbery/Other Weapon Street/Alley/Highway		
Burglary Force Involved <input type="checkbox"/> Yes <input type="checkbox"/> No	Weapon/Force Used Knife/Cutting Instrument		

Investigative Narrative

In regards to this original incident, this officer, 13F (Villaverde) responded to the area of the 500 block of N Harrison St to assist. Upon arrival, this officer assisted by keeping a large crowd away from the crime scene. After the area was secured, this officer assisted with locating shell casings on the scene. Once all evidence had been secured, this officer was then assigned to a fixed traffic post at the intersection of W 6th and N Harrison St and was responsible for diverting pedestrian and vehicular traffic. This officer was then assigned to a fixed traffic post at the intersection of W 5th and N Van Buren St to block all vehicular traffic until relief arrived at approximately 0130hrs.

SC11

W0031

Reporting Officer CPL VILLAVERDE - 7068	Pending Supervisory Review
Solvability Factors	

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HARRY SMITH, JR. and ROSLYN)
WOODARD SMITH, individually and)
as Administrators of the ESTATE)
OF HARRY SMITH, III,)
)
Plaintiffs,)
) Civil Action
v.) No. 04-1254-GMS
)
CITY OF WILMINGTON, JOHN)
CIRITELLA, THOMAS DEMPSEY and)
MATTHEW KURTEN,)
)
Defendants.)

Deposition of JENNIE VERSHOVSKY, M.D.
taken pursuant to notice at the law offices of
Richards, Layton & Finger, One Rodney Square, Third
Floor, Wilmington, Delaware, beginning at 2:10 p.m. on
Tuesday, May 30, 2006, before Kurt A. Fetzer,
Registered Diplomate Reporter and Notary Public.

APPEARANCES:

ANNE T. SULTON, ESQ. (Via teleconference)
SULTON LAW OFFICES
Post Office Box 2763
Olympia, Washington 98507
For the Plaintiffs

WILCOX & FETZER
1330 King Street - Wilmington, Delaware 19801
(302) 655-0477
www.wilfet.com

SC12



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1 APPEARANCES: (Cont'd)

2 JOHN A. PARKINS, JR., ESQ.
3 RICHARDS LAYTON & FINGER
4 One Rodney Square - Third Floor
5 Wilmington, Delaware 19801
6 - and -
7 ROSAMARIA TASSONE, ESQ.
8 CITY OF WILMINGTON LAW DEPARTMENT
9 City/County Building - 9th Floor
10 Wilmington, Delaware 19801
11 For the Defendants
12

13 - - - - -

14 JENNIE VERSHVOVSKY, M.D.,
15 the deponent herein, having first been
16 duly sworn on oath, was examined and
17 testified as follows:

18 EXAMINATION

19 BY MR. PARKINS:

20 Q. Dr. Vershvovsky, I'm about to ask you a series
21 of questions concerning an autopsy that you performed
22 on or about September 14th, 2003 on Harry J. Smith,
23 III.

24 I'm afraid that I am not well-versed in
medical technology -- excuse me -- in medical parlance
so I may misspeak. And if I ask you anything which is
unclear to you, please don't hesitate to tell me that
and I will attempt to rephrase my question.

A. Okay.



1 Q. Let me draw this for you.

2 A. The bullet can't come from the left. The
3 bullet has to come from the right or Mr. Smith's head
4 has to be turned to the right, to the side from where
5 the bullet was coming.

6 Q. Now, assume for the moment that Mr. Smith were
7 sitting in the driver's seat of the car and he had
8 turned his head slightly to look at, say, if we think
9 of this as a clock with front ahead as being 12:00
10 o'clock and if he had turned his head slightly to,
11 say, look at 2:00 o'clock, could the bullet have come
12 from the right rear?

13 A. From right, the bullet can come from right.

14 Q. Yes. In your view, if there were testimony
15 that he was being shot at from the left, it's not
16 likely that those shooters would have fired this
17 projectile?

18 A. No.

19 Q. Now let's take a look, if we could, at
20 paragraph numbered 13. There's reference to a round
21 gunshot wound. The previous one was a stellate wound.

22 Is there any significance to the fact that
23 this is round as opposed to stellate?

24 A. Wounds have different appearance on the head



1 than on the body because on the head, as I explained,
2 we have a bone. That is why we have a stellate wound
3 more often on the head.

4 On the body because we have skin,
5 underlying soft tissue bullets most common have round
6 entrance wounds.

7 Q. Now, this particular wound entered Mr. Smith's
8 left upper back?

9 A. Yes.

10 Q. And do you have a photograph here?

11 A. Yes.

12 Q. This is wound number 2?

13 A. Yes.

14 Q. Did we recover a bullet for wound number 2?

15 A. Yes, we did.

16 Q. Now, did the wound number 2 strike the spinal
17 cord?

18 A. No.

19 Q. Did it strike any major arteries or organs?

20 A. I didn't perform a dissection of the whole path
21 of the wound, so I can't tell you about the vessels,
22 but it didn't strike major organs.

23 Q. The direction of the wounding is from back to
24 front. Am I correct?



1 A. Yes.

2 Q. Assuming for the moment that Mr. Smith were
3 seated facing straight ahead in a police car, could
4 this wounding have come directly from his right?
5 Excuse me. Directly from his left?

6 A. This wound mostly come from the shooting, from
7 behind, from the back.

8 Q. What was the path of the bullet once it entered
9 his body? Did it go straight through or did it take
10 an angle?

11 A. It went from back to front. I recovered it in
12 the soft tissue of the chest.

13 I'll show you the X-ray of the bullet.

14 Q. You're showing me what is --

15 A. It's an X-ray of the bullet in the body intact,
16 before I took them out.

17 Q. The round item is the bullet itself?

18 A. Yes.

19 Q. There appears to be sort of a --

20 A. It's for us to orient how to find the bullet on
21 X-ray. We put a metal object.

22 Q. That's not anything to do with the bullet?

23 A. (Witness shakes head).

24 Q. I thought that.



1 Q. Let's take a look at numbered paragraph 16
2 which is wound number 5.

3 A. 16 will be wounds 8 and 9.

4 Q. And where were they?

5 A. Let me see. This was a wound in the forearm,
6 in this area (indicating).

7 Q. Near the elbow?

8 A. Yes.

9 Q. And which direction was this wound traveling?

10 A. This wound was traveling right to left and
11 almost straight.

12 Q. So, again, as with the shot to the head, this
13 could not have come from the left?

14 A. This came from the right.

15 Q. Was this what I sometimes refer to as a through
16 and through wound?

17 A. Yes.

18 Q. And you recovered no bullet?

19 A. No bullets were recovered from both wounds
20 which we discussed.

21 Q. By through and through that means to you that
22 it entered the body and left the body?

23 A. Yes.

24 Q. Do you know if this -- obviously it did not



1 intercept any major organs since it was in his arm.

2 Do you know if it interrupted any major
3 vessels?

4 A. I didn't dissect the vessels.

5 Q. Let's take a look, if we could, at paragraph
6 17, which is wound number 6.

7 You recovered a bullet for this, did you
8 not?

9 A. Yes.

10 Q. Where did this particular bullet strike
11 Mr. Smith?

12 A. This bullet was recovered from the right leg.
13 Let me see if I can show you that.

14 I don't have a photograph of the entrance
15 wound, but I have a photograph of the place where I
16 recovered the bullet. And if you look at the diagram
17 I gave you, it will show you where the entrance was.

18 Q. May I take time out to make a photocopy of this
19 document?

20 A. It's yours, yes. It's your copy.

21 MR. PARKINS: Mr. Fetzer, will you please
22 mark this as I guess number 2?

23 (Vershovovsky Deposition Exhibit No. 2 was
24 marked for identification.)



(Discussion off the record.)

BY MR. PARKINS:

Q. Doctor, on this chart it looks as if bullet wound number --

A. I don't have 5 here.

Q. Okay. What number is 5?

A. 5 will be -- I just had a photograph that I can show you. The entrance I labeled number 6. It was medial aspect of the knee.

Q. And that means sort of right below or at the knee on the right leg. Is that correct?

A. Yes.

Q. And did this bullet remain in Mr. Smith?

A. Yes.

Q. Where did you find it or where was its path?

A. We recovered this bullet in the soft tissue of the posterior surface of the leg. You can see on the photographs the leg is turned.

Q. Which paragraph, numbered paragraph does this wound correspond to on the report?

A. This is paragraph, my paragraph number 7.

Q. 7.

In the photograph it looks as if the bullet is found near the surface on his right calf or



1 in that area. Am I correct?

2 A. Yes, in the soft tissue.

3 Q. And it entered his leg near the knee. Am I
4 correct?

5 A. Yes.

6 Q. Does that mean it was going in a somewhat
7 downward trajectory?

8 A. It was going from front to back and it was
9 going down because here I was able to measure how far
10 from the top of the head was the entrance wound and
11 the place where I recovered the bullet.

12 Q. This would have been consistent with perhaps
13 Mr. Smith sitting down and somebody standing up and
14 shooting into his knee?

15 A. It's consistent.

16 Q. Now, I need to be sure I understand something
17 here. This is photographed as number 5. Am I
18 correct?

19 A. Yes.

20 Q. But it relates, does it not, to paragraph
21 number 7 in your report?

22 A. Yes.

23 Q. What I need to do is figure out which bullets
24 relate to which paragraphs of your report.



1 Now, we have here a photograph of bullet
2 number 5.

3 A. Yes.

4 Q. Is that the one that was recovered from his
5 right leg?

6 A. Yes.

7 Q. So bullet number 5 relates to paragraph number
8 7 in your report?

9 A. Yes.

10 Q. Which bullet relates to paragraph number 6 in
11 your report?

12 A. My paragraph 6?

13 Q. Your paragraph 6.

14 A. Number 7. It says on the diagram number 7.

15 Q. All right. I see that now.

16 Where did number 7 strike Mr. Smith?

17 A. This was a bullet with an entrance located on
18 the right upper arm and a bullet which went through
19 the skin and soft tissue of the upper arm and chest.
20 The bullet was recovered in the soft tissue of the
21 chest on the right side. And I showed you the X-ray
22 there were two bullets. This was one of the bullets.

23 Q. So far as you can tell, it did not traverse any
24 major organs?



1 A. No organs. But, again, I didn't dissect the
2 vessels to see if there was damage to them.

3 Q. I'm sorry, Doctor, and this is me, not you,
4 trust me. But on wound number 7 I thought you told me
5 it corresponds to bullet number 5, but the report says
6 number 6.

7 A. Yes. That's my -- I didn't put here the
8 entrance wound. It was 5 and 6. I just forgot to add
9 it in the report so it would be easier.

10 Q. That's fine.

11 So number 5 is the bullet for item 7?

12 A. Item 6. 5 and 6. 7 --

13 Q. No. But for number 5 is the bullet that
14 corresponds to wound number 7 on your report? Am I
15 correct?

16 A. The number of the bullets which you have on
17 this photograph correspond to how the bullet was
18 numbered here (indicating), not to the photograph
19 number. The paragraph numbers have nothing to do with
20 it.

21 Q. I understand that. But what I am trying to be
22 sure I understand is that bullet number 7, which you
23 happened to have a photograph of in your hand at this
24 moment --



1 A. Is the bullet from the shoulder.

2 Q. From the shoulder which relates to injury
3 number 6 on your report?

4 A. Number 5.

5 Q. Number 5.

6 A. I'm sorry. Yes, number 6. Paragraph number 6.

7 Q. And I want to go back and make sure I have this
8 correct and, again, it's me, not you.

9 The head injury which is injury number 1
10 relates to bullet number 1?

11 A. Number 1.

12 Q. Injury number 2 relates to bullet number 2?

13 A. Yes, the one which was recovered in the left
14 chest.

15 Q. Yes. Injury number 3, does that relate to
16 bullet number 3?

17 A. Yes.

18 Q. For injury number 4 no bullet was recovered?

19 A. No.

20 Q. Injury number 5 no bullet was recovered?

21 A. Number 5, this was the place where I recovered
22 the bullet from the leg.

23 Q. No. I'm sorry. It looks to me on your report
24 as injury number 5 is undetermined range perforating



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HARRY SMITH, JR., and ROSLYN
WOODARD SMITH, individually and as
Administrators of the ESTATE OF HARRY
SMITH, III,

Plaintiffs,

VS.

C.A. NO. 04-1254-GMS

CITY OF WILMINGTON, JOHN
CIRITELLA, THOMAS DEMPSEY and
MATTHEW KURTEN,

Defendants.

VIDEOTAPE DEPOSITION

OF

ELBERT WATERS

September 14, 2006

ALPHA REPORTING CORPORATION
236 Adams Avenue
Memphis, Tennessee 38103
(901) 523-8974
www.alphareporting.com

<p style="text-align: right;">Page 122</p> <p>1 Q. What after that?</p> <p>2 A. After he drove away, then they should have</p> <p>3 tried it again. They should have pulled out the</p> <p>4 strips that put holes in tires.</p> <p>5 Q. Do you know whether the officers had those?</p> <p>6 A. I don't.</p> <p>7 Q. Okay. So let's assume for the moment that</p> <p>8 there's no evidence that they did. What should</p> <p>9 they have done?</p> <p>10 A. Tried another blockade.</p> <p>11 Q. And is there any reason to believe it would</p> <p>12 work better than the first one?</p> <p>13 A. Certainly.</p> <p>14 Q. Why?</p> <p>15 A. Circumstance of opportunity situation.</p> <p>16 Another officer could have gotten in front of the</p> <p>17 vehicle.</p> <p>18 Q. Which one?</p> <p>19 A. They could of -- one that was not involved.</p> <p>20 Q. Who?</p> <p>21 A. There are many names that were involved.</p> <p>22 Q. But who was in a position to get in front of</p> <p>23 him?</p> <p>24 A. I don't know all the people who were around</p> <p>25 in the area --</p>	<p style="text-align: right;">Page 124</p> <p>1 be deployment at this intersection.</p> <p>2 Q. Incidentally, you keep referring to your 16</p> <p>3 years of experience as a police officer, and I</p> <p>4 certainly don't wish to demean that in any way --</p> <p>5 A. Uh-huh (affirmative response).</p> <p>6 Q. -- but do you know whether the officers in</p> <p>7 this event had more or less experience than you?</p> <p>8 A. Well, one had 19 years and another had, I</p> <p>9 think, seven years, and the point is the time on</p> <p>10 the job is of no material value in this</p> <p>11 situation. The fact of the matter is the</p> <p>12 situation as it develops, either you can use</p> <p>13 deadly force whether you've been on the force for</p> <p>14 five year or 20 years or you can't.</p> <p>15 Q. Well, these individuals, is it correct, were</p> <p>16 forced to make split-second decisions on the</p> <p>17 corner of Fifth and Harrison Street?</p> <p>18 A. Yes.</p> <p>19 Q. So your view as to the plan that they could</p> <p>20 have made would have been to try to head off</p> <p>21 Mr. Smith again and see if he ran another</p> <p>22 blockade; is that correct?</p> <p>23 A. That's correct.</p> <p>24 Q. Now, you indicate on page -- looks like page</p> <p>25 9 of your report that the explanations offered by</p>
<p style="text-align: right;">Page 123</p> <p>1 Q. Okay.</p> <p>2 A. -- at that location.</p> <p>3 Q. Did -- is there any evidence that either</p> <p>4 Ciritella, Dempsey, or Kurten knew anybody that</p> <p>5 was in the position to get ahead of them?</p> <p>6 A. Well, I can't speak to what they know, but</p> <p>7 as a police officer who has plenty of experience</p> <p>8 on the street, I know this: When a police</p> <p>9 activity of that magnitude occurs, everybody is</p> <p>10 talking that needs to know what needs to be going</p> <p>11 on.</p> <p>12 Q. Is it your answer you don't know of any</p> <p>13 evidence that any of those three individual</p> <p>14 officers were aware who -- or knew that somebody</p> <p>15 was ahead of them that could have cut off</p> <p>16 Mr. Smith again?</p> <p>17 A. Well, we're going back -- I don't know what</p> <p>18 they knew, but I know as a police officer who did</p> <p>19 16 years in the street listening to a radio every</p> <p>20 day, I know that when you have a event of this</p> <p>21 magnitude, everybody is listening and waiting for</p> <p>22 direction from the sergeant because it's the</p> <p>23 sergeant or the lieutenant's call to determine</p> <p>24 whether the chase should be continued, whether the</p> <p>25 chase should be discontinued, whether there should</p>	<p style="text-align: right;">Page 125</p> <p>1 these officers for their actions is questionable.</p> <p>2 What explanations are questionable?</p> <p>3 A. The explanations as to why they fired so</p> <p>4 many shots. The unlikelihood of some of the</p> <p>5 circumstances as they evolved. Detective</p> <p>6 Ciritella states that he was in front of the car,</p> <p>7 and he was telling the man the stop. But yet he</p> <p>8 also said he was beside the building taking</p> <p>9 cover.</p> <p>10 Now, if the car was going to run into</p> <p>11 him, surely he would have hit the building. You</p> <p>12 know, if I'm standing beside a building as a</p> <p>13 police officer, and then somebody coming at me,</p> <p>14 they have a choice to hit the building or go some</p> <p>15 -- a different direction. That's one part.</p> <p>16 The fact that when the officers were</p> <p>17 shooting from behind, they couldn't even see in</p> <p>18 the car because there's a partition that keeps</p> <p>19 offenders in the back and the police in the front,</p> <p>20 but when you're behind the car outside, you can't</p> <p>21 see. You can barely see through a police car.</p> <p>22 You can hardly see the driver because that's where</p> <p>23 usually there's a metal or some type of</p> <p>24 reinforcement.</p> <p>25 Q. So if that's the case and if Mr. Smith were</p>

32 (Pages 122 to 125)

<p style="text-align: right;">Page 126</p> <p>1 slumped over and unconscious, they wouldn't be 2 able to see that, would they? 3 A. If they were close, which they stated they 4 were within feet. 5 Q. Oh, then they could see in the car? 6 A. Yes. 7 Q. Oh, well, then why were you telling me about 8 this -- something about the partition? 9 A. Because -- it's important because we have -- 10 you asked me about the plausibility of what they 11 said. You're asking me -- here I said that the 12 explanations offered by these officers for their 13 actions is questionable. 14 Now, I did not see anything from any of 15 them that justified shooting the number of times 16 they did. They didn't see a target, obviously, 17 but they said they did. This is where I'm talking 18 about their actions are questionable, and as a 19 police officer who was involved in and witnessed 20 many controversial situations, it tells me that, 21 you know, it was possibly an attempt to legitimize 22 an illegitimate action. 23 Q. Do you find fault with the fact that they 24 did not write a report on their actions? 25 A. I do.</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. Do you -- are you saying that the questioner 2 guided these individuals as to what happened? 3 A. I'm saying that's a possibility. 4 Q. Did you listen to the interviews? 5 A. I did not. 6 Q. Did you know that there were interviews? 7 A. I'm sure there were, but I haven't seen 8 those. 9 Q. Did you ask to see them? 10 A. No. 11 Q. Wouldn't that have been important? 12 A. That would have been important for -- 13 Q. Okay -- go ahead. 14 A. That would have been important. What I was 15 doing was giving an opinion on the basic facts as 16 they were presented. 17 Q. But you criticize the officers for not 18 writing a report, and you also criticize them for 19 questionable explanations -- 20 A. Well -- 21 Q. -- let me finish, please -- 22 A. Yeah, okay. 23 Q. -- and you tell me it would have been 24 important to listen to those interviews. Why 25 didn't you ask?</p>
<p style="text-align: right;">Page 127</p> <p>1 Q. Why is that? 2 A. Because every police shooting that I've ever 3 been involved in or witnessed, the police officers 4 had to give an account of their story. That's the 5 fundamental basis of the investigation. 6 Q. Didn't they give a statement that very 7 evening? 8 A. They did to an officer. 9 Q. What purpose would a written statement have 10 done that was not done on the videotaped 11 statement? 12 A. I guess you could say that it was the same. 13 Q. So what difference does it make whether they 14 gave a written statement? 15 A. The technicality that here's what I'm 16 telling happened in my own writing. 17 Q. Wouldn't that be the same whether it was an 18 oral statement or a written one? 19 A. Well, in an oral statement the thought flow 20 is guided. What happened? What happened here? 21 If you ask me to write a report on what happened, 22 I write in an unguided fashion, and you get a 23 clearer picture of what I perceived to have 24 happened as opposed to guiding me to what 25 happened.</p>	<p style="text-align: right;">Page 129</p> <p>1 A. Let's see. I didn't ask because at the time 2 I didn't think it would be germane to the basic 3 testimonies that I was reading. 4 Q. But you're criticizing them right here for 5 not writing the report? 6 A. Yeah, because -- let me see. I have 7 something about the files, and I'll show you where 8 I got to that and why I came up with that. 9 On directive 6.7-DI officers are 10 required to immediately report to their immediate 11 supervisor or, if this is not possible, the house 12 sergeant whenever they draw or exhibit their 13 weapon when off duty and submit a written report 14 of the circumstances as soon as possible. 15 Q. So off duty? 16 A. And there was also the same thing, okay? 17 Q. Please answer my question -- 18 A. Yes. 19 Q. -- was that off duty? 20 A. Yes, you're right. 21 All right. Let's go to directive 22 6.7-6-4. When a police officer discharges a 23 weapon and a person is either injured or killed -- 24 and this is on duty -- that officer will complete 25 his preliminary report of the incident and then he</p>

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

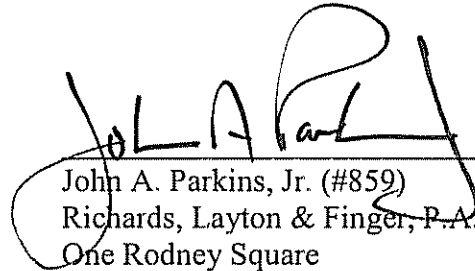
CERTIFICATE OF SERVICE

I hereby certify that on March 14, 2007, I electronically filed the foregoing document with the Clerk of Court using CM/ECF which will send notification of such filing(s) and Hand Delivered to the following:

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Williams & Crosse
1214 King Street
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Wilmington, DE 19801

I hereby certify that on March 14, 2007, I have sent by U.S. Regular Mail, the foregoing document to the following non-registered participants:

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